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**Consumers
Power**

**POWERING
MICHIGAN'S PROGRESS**

Fifth Floor, 1016 - 16th Street, N.W., Washington, D.C. 20036 • (202) 293-5795 • (202) 223-6178 (fax)

19673
OCT 19 1995 4:20 PM

Deborah A. Moss
Attorney

October 19, 1995

Vernon A. Williams, Secretary
Interstate Commerce Commission
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Mr. Williams:

Attached is an original and one copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

The attached document is an Interim User Agreement, a primary document, dated October 13, 1995.

The names and addresses of the parties to the attached Interim User Agreement are as follows:

Owner: Thrall Car Manufacturing Company
2521 State Street
Chicago Heights, IL 60411
Attention: Everett Engle
Fax (708) 757-4112

User: Consumers Power Company
1945 W. Parnall Road
Jackson, MI 49201
Attention: William E. Garrity
Fax (517) 788-2997

RECEIVED
OCT 20 9 15 AM '95
LICENSING SECTION

A description of the equipment covered by the Interim User Agreement follows:

231 aluminum Avalanche railcars, to bear railroad marks and numbers FSTX 9005, 9006, and 9010 through 9238.

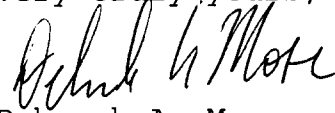
A fee of \$21.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to Deborah A. Moss, Consumers Power Company, Fifth Floor, 1016 16th Street, N.W., Washington, D.C. 20036.

Counterparts - Deborah A. Moss

A short summary of the document to appear in the index follows:

Interim User Agreement between Thrall Car Manufacturing Company, 2521 State Street, Chicago Heights, IL 60411 and Consumers Power Company, 1945 W. Parnall Road, Jackson, MI 49201, dated October 13, 1995, and covering 231 aluminum Avalanche railcars, to bear railroad marks and numbers FSTX 9005, 9006, and 9010 through 9238.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Deborah A. Moss". The signature is fluid and cursive, with the first name "Deborah" being more prominent than the last name "Moss".

Deborah A. Moss
Attorney
CONSUMERS POWER COMPANY
1016 16th Street, N.W.
Suite 500
Washington, DC 20036



Interstate Commerce Commission
Washington, D.C. 20423-0001

10/20/95

Office Of The Secretary

Deborah A. Moss
Attorney
Consumers Power Company
1016 16th Street, NW., Ste. 500
Washington, DC., 20036

Dear Madam:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/19/95 at 4:20PM, and assigned recordation number(s). 19673.

Sincerely yours,

Vernon A. Williams
Secretary

Enclosure(s)

(0100821012)

\$ 21.00 The amount indicated at the left has been received in payment of a fee in connection with document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature

19673

INTERIM USER AGREEMENT OCT 13 1995 1:22 PM

THIS AGREEMENT, dated as of October 13, 1995, by and between THRALL CAR MANUFACTURING COMPANY, an Illinois corporation ("Thrall") and CONSUMERS POWER COMPANY, a Michigan corporation ("Consumers").

WITNESSETH:

WHEREAS, Consumers desires to acquire the use of 231 aluminum Avalanche railcars, to bear railroad road marks and numbers FSTX 9005, 9006, and 9010 through 9238, (collectively the "Railcars" and individually a "Railcar").

WHEREAS, Consumers and Thrall have contracted for the purchase and sale of the Railcars pursuant to a Purchase Order dated February 7, 1995, as amended, and the documents listed on Exhibit A hereto, (collectively, the "Purchase Order").

WHEREAS, Consumers has obtained commitments to finance the purchase of the Railcars pursuant to one or more permanent forms of financing (the "Financing") and has scheduled closing dates on or about October 27, 1995 and November 7, 1995; and

WHEREAS, Consumers desires that it be permitted to use the Railcars pending the closing of such Financing, and Thrall is willing to grant such temporary custody and possession to Consumers, solely upon the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises, and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Subject to the terms and conditions contained herein and in the Purchase Order, Thrall agrees to deliver physical possession of the Railcars to Consumers. The rights of Consumers hereunder in respect of each Railcar shall commence on the date of acceptance of such Railcar by Consumers from Thrall (the "Acceptance") and, unless sooner terminated pursuant to the provisions hereof, shall end on the date of payment of the purchase price of such Railcar by Consumers, or by its designee under the Financing (the "Closing"). Whether or not the Financing shall then have occurred, Consumers, on November 10, 1995, shall purchase and pay for, in cash, all Railcars previously accepted by Consumers and not previously paid for by Consumers or its designee, and the obligation of Consumers to do shall be absolute and unconditional, regardless of the condition of such Railcars or any other event or circumstance. At the Closing with respect to any Railcars, Thrall shall sell such Railcars to Consumers or such purchaser as Consumers may provide, at the price set forth in the Purchase Order. Nothing in this Agreement shall relieve Consumers of its obligation to take, purchase and pay for the Railcars in accordance with the terms of the Purchase Order.

2. On Acceptance of any Railcar, Consumers shall assume the responsibility and risk of loss with respect to such Railcar and will deliver to Thrall a Certificate of Acceptance substantially in the form attached hereto as Exhibit B (the "Certificate and Acceptance"). Execution of the Certificate of Acceptance by Consumers shall constitute acceptance by Consumers of the Railcars identified in the Certificate of Acceptance for all purposes of this Agreement and the Purchase Order. On Acceptance, Thrall's warranty with respect to such Railcar will commence.

3. Full and complete title to the Railcars shall remain in Thrall until Closing and Consumers' rights and interests therein shall be solely that of temporary possession, custody, and use under this

Agreement. Neither Consumers nor any person claiming by, through or under Consumers shall acquire any title to or ownership of the Railcars, or any portion thereof, by virtue of this Agreement or the temporary possession and use of the Railcars by Consumers under or pursuant to this Agreement. Transfer of title to any Railcar to Consumers or to any purchaser provided by Consumers shall be effected only at Closing by delivery by Thrall of a bill of sale to Consumers or to such purchaser; provided, however, that title to different Railcars may be transferred at different times and under separate bills of sale, to the extent that such Railcars shall be subject to different financing arrangements. When the purchase price of any Railcar has been paid in full to Thrall, together with all other amounts payable to Thrall hereunder with respect to such Railcar, and Thrall has delivered an appropriate bill of sale, this Agreement shall automatically be terminated with respect to such Railcar without further action by or notice to any party concerned. Prior to delivery of any Railcar, Consumers shall do such acts as may be required by law, or requested by Thrall, for the protection of Thrall's title to and interest in the Railcars, including, without limitation, recording, at Consumers' expense, a fully signed counterpart of this Agreement with the Interstate Commerce Commission ("ICC") (and it is understood that Thrall hereby requests, and Consumers hereby agrees to perform, such filing with the ICC), and wherever else necessary to protect Thrall's interest. Upon receipt of all payments required to be made hereunder and under the Purchase Order with respect to any Railcars, Thrall shall, at the request of Consumers, deliver to Consumers or its designee a release of Thrall's right, title and interest in such Railcars, such release to be in form suitable for filing with the ICC.

4. This Agreement is an arrangement under which Consumers will have temporary possession, custody, and use of the Railcars to be purchased from Thrall, and the risk of loss of the Railcars after Acceptance is on Consumers. Consumers will, at all times while this Agreement is in effect and at its own expense, cause to be carried and maintained in full force and effect in such amounts and with such terms (including co-insurance, deductibles, limits of liability and loss payment provisions) as are customary under Consumers' risk management program and in keeping with risks assumed by corporations of established size and reputation engaged in the same businesses and similarly situated: (i) public liability insurance against loss or damage for person injury, death or property damage occurring as a result of the ownership, maintenance, use or operation of the Railcar; and (ii) property damage insurance on the Railcars; provided, however, that Consumers may self-insure with respect to any or all of the above as is customary under Consumers' risk management program; and provided, further, that any such self-insurance will be comparable to self-insurance provisions generally applicable to other comparable equipment owned or leased by Consumers. Any liability insurance policies maintained by Consumers while this Agreement is in effect shall name Thrall as an additional insured. Consumers agrees to provide Thrall with a certificate of the above insurance coverages maintained by Consumers, which certificate shall provide that Thrall be given at least 30 days notice of cancellation of such policies.

5. Consumers agrees (i) to use the Railcars exclusively in unit train service to deliver coal to one of its generating stations and (ii) that none of the Railcars shall be shipped beyond the boundaries of the United States, except with the prior written consent of Thrall.

6. In addition to any other rights or remedies which Thrall may then have under law, upon default by Consumers in performing any term of this Agreement or the Purchase Order, Thrall, without demand or notice, may, but shall not be obligated to, terminate this Agreement, and upon such termination, Consumers shall, if requested by Thrall, immediately assemble all of the Railcars, make them available to Thrall at such place or places as Thrall may designate and store, protect, maintain and preserve the Railcars pending receipt of further instructions from Thrall, and shall thereafter transport all or any portion of the Railcars to such place or places as Thrall shall designate, all at the sole risk and cost of Consumers.

7. It is the intent of the parties that Thrall shall suffer absolutely no loss as a result of this Agreement and Consumers agrees that it will permit no liens of any kind to attach to the Railcars, and that it will (a) indemnify, defend, and save harmless Thrall from and against all claims, expenses, costs, or liabilities of whatsoever kind or nature arising out of retention by Thrall of title to the Railcars or out of the temporary possession, use and operation thereof by Consumers (including without limitation third party claims for bodily

injury or property damage and claims by employees of Consumers) during the period when title thereto remains in Thrall, or otherwise out of this Agreement (including without limitation consequential damages and lost profits under the Purchase Order) and (b) pay any and all taxes, (other than income taxes imposed on Thrall), fines, fees, charges, and penalties that may accrue or be assessed or imposed upon the Railcars or Thrall because of its retention of title to the Railcars or because of any person's use, marking, operation, management or handling of the Railcars after Acceptance and while title to such Railcars remains in Thrall pursuant to this Agreement.

8. Consumers shall, at its own expense, keep and maintain the Railcars in good order, repair and running in condition and will, at its option, repair or replace or promptly pay to Thrall the purchase price in cash of those Railcars which may be damaged or destroyed by any cause during the term of this Agreement. The design, construction or specifications of any Railcar, or any part thereof, may not be changed without the prior written approval of Thrall. Consumers shall maintain, use and operate the Railcars in compliance with all applicable laws, rules and regulations, including, without limitation, the Interchange Rules of the Association of American Railroads.

9. Prior to the physical delivery of any Railcar to Consumers it will be marked and numbered with its appropriate road designation; in addition, there shall be plainly, distinctly, permanently, and conspicuously marked and maintained by Consumers upon both sides of each Railcar in letters not less than one inch in height the following words:

Leased from a Bank or Trust Company, as Trustee, and subject to a Security Interest
recorded with the Interstate Commerce Commission

No road marks or numbers shall be placed on the Railcars other than those specified in the first "Whereas" clause of this Agreement.

10. Consumers hereby makes the following representations and warranties to Thrall, the truth and accuracy of which shall be a condition precedent to the obligation of Thrall to deliver any Railcars to Consumers hereunder:

- a. Consumers is a corporation, duly organized, validly existing and in good standing under the laws of the State of Michigan, has all requisite power and authority to execute and deliver and to perform its obligations under the Purchase Order, this Agreement and any related documents delivered by Consumers in connection with this agreement (hereinafter collectively referred to as the "Consumers Power Company Documents"), to carry on its business as now conducted, and is duly qualified and in good standing in such other jurisdictions in which the failure to so qualify or be in good standing could adversely affect its ability to perform its obligations under the Consumers Power Company Documents.
- b. The Consumers Power Company Documents have been duly authorized, executed and delivered by Consumers, and assuming the due authorization, execution and delivery of such documents by Thrall, are legal, valid and binding instruments enforceable against Consumers in accordance with their terms, except as enforcement may be limited by general principles of equity or by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to the enforcement of creditors rights generally.
- c. No authorization or approval from any governmental or public body or authority of the United States of America, or of any of the States thereof or the District of Columbia, is necessary for the execution, delivery and performance by Consumers of the Consumers Power Company Documents.
- d. Neither the execution and delivery of the Consumers Power Company Documents nor the consummation of the transaction therein contemplated nor the fulfillment of, or compliance

with, the terms and provisions thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of the organizational documents or the by-laws of Consumers, or of any bond, debenture, note, mortgage, indenture, deed of trust, lien, agreement or other instrument to which Consumers is a party or by which it or its property may be bound, or constitute (with or without the giving of notice or the passage of time or both) a default thereunder, or result in the creation of any lien on the Railcars (other than any lien in favor of Thrall) or upon property of Consumers.

- e. Neither the execution and delivery by Consumers of the Consumers Power Company Documents nor the consummation of the transactions therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach or violation of, any of the terms, conditions or provisions of any law, or any regulation, rule, order, award, injunction or decree of any court or governmental instrumentality or arbitrator.

Prior to the delivery of the first Railcars to Consumers hereunder, Consumers shall deliver an opinion of its counsel to Thrall with respect to the matters set forth above,

11. Thrall shall have the right to assign its rights under this Agreement.
12. This Agreement shall be interpreted under, and its performance shall be governed by, the laws of the State of Illinois without regard to its conflicts of laws doctrine, and the applicable federal laws of the United States of America.
13. This Agreement shall be binding upon, and shall constitute the complete agreement between the parties and their respective successors and assigns, with respect to the subject matter hereof, and may be amended or modified only in a writing lawfully executed by the parties hereto. Any provisions of this Agreement determined to be unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof.
14. Any amounts payable to Thrall hereunder which are not paid when due shall bear interest from the due date thereof until paid at the rate of twelve percent (12%) per annum, but in no event greater than the maximum rate permitted by applicable law.
15. All communications under this Agreement shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail and courier service, (b) five (5) days after the date on which it shall have been mailed by United States mail (by certified mail, postage prepaid, return receipt requested), or (c) in the case of notice, by such a telecommunications device, when properly transmitted, addressed to each party at the following addresses or to such other address as the party to whom the same is intended shall specify in conformity with the foregoing:

If to	THRALL CAR MANUFACTURING COMPANY 2521 State Street Chicago Heights, IL 60411 Attention: Everett E. Engle Fax (708) 757-4112
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If to

CONSUMERS POWER COMPANY:
1945 W. Parnall Road
Jackson, MI 49201
Attention: William E. Garrity
Fax No. (517) 788-2997

16. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

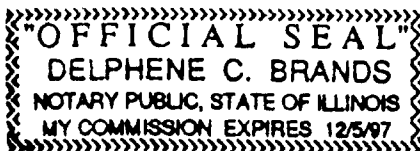
IN WITNESS WHEREOF, the parties hereto and have caused this Agreement to be executed by their respective officers thereunder duly authorized as of the day and year first above written.

THRALL CAR MANUFACTURING COMPANY

By *Everett E. Engle*

Name: Everett E. Engle

Its: Vice President - Marketing Services



Delphine C. Brands

CONSUMERS POWER COMPANY

By *Robert J. Nicholson*

Name: Robert J. Nicholson

Its: Vice President - Fossil and Hydro Operations

APPROVED TO FORM
[Signature]

EXHIBIT "A"
TO
INTERIM USER AGREEMENT

PURCHASE ORDER

Purchase Order No. C0014192 dated February 7, 1995, issued by Consumers Power Company to Thrall Car Manufacturing Company

Terms and Conditions of Thrall Car Manufacturing Company

Change Order No. 1 dated May 24, 1995, to the Purchase Order

Change Order No. 2 dated July 19, 1995, to the Purchase Order

Letter, dated December 19, 1994, from Thrall Car Manufacturing Company to Consumers Power Company

Letter, dated April 11, 1995, from Thrall Car Manufacturing Company to Consumers Power Company

Letter, dated June 9, 1995, from Thrall Car Manufacturing Company to Consumers Power Company

Letter, dated June 19, 1995, from Thrall Car Manufacturing Company to Consumers Power Company

EXHIBIT "B"
TO
INTERIM USER AGREEMENT

CERTIFICATE OF ACCEPTANCE

I have been appointed as the duly authorized representative of Consumers Power Company ("Consumers") for the purpose of inspecting, accepting, and receiving delivery of the units of railroad equipment described below (the "Railcars"), which are referred to in the Interim User Agreement dated as of October 13, 1995 (the "Agreement"), between Thrall Car Manufacturing Company ("Builder") and Consumers. Title to the Railcars does not pass upon such acceptance, but only passes to Consumers or its assigns upon payment of the purchase price therefore and delivery of title to the Railcars at the Closing of such Railcars, as described in the Agreement. Capitalized terms used herein and not otherwise defined herein shall have the meanings as defined in the Agreement.

I hereby certify that with respect to the Railcars:

1. Each Car has been inspected and is in good order.
2. Based on my determination that each Railcar is in compliance with all applicable specifications, each Car is hereby accepted for all purposes of the Agreement and the Purchase Order.

Type of Equipment: Aluminum Avalanche Railcar

Place Accepted: Cartersville, Georgia

Date Accepted:

Number of Cars:

Reporting Marks: FSTX

Car Numbers Car Weights

THE UNDERSIGNED further certifies that there was plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each Car the following legend in letters not less than one inch in height:

LEASED FROM A BANK OR TRUST COMPANY, AS TRUSTEE, AND SUBJECT TO A SECURITY INTEREST RECORDED WITH THE INTERSTATE COMMERCE COMMISSION.

Authorized Representative of
Consumers Power Company

Date:

DFR552\RCM646

STATE OF MICHIGAN)
) SS:
COUNTY OF JACKSON)

On this 12th day of October, 1995, before me personally appeared Robert J. Nicholson, to me personally known, who, being by me duly sworn, says that he is Vice President, Fossil and Hydro Operations of Consumers Power Company, that said instrument was executed on behalf of said corporation by authority of its Board of Directors, and he acknowledged before me that the execution of the foregoing instrument was the free act and deed of said corporation.

Beverly A. Avery
Notary Public

My commission expires: _____

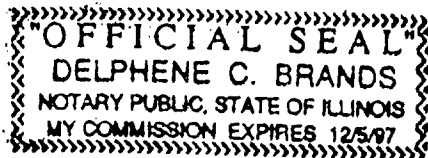
BEVERLY A AVERY NOTARY PUBLIC STATE OF MICHIGAN JACKSON COUNTY MY COMMISSION EXP. DEC. 3, 1996

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

On this 13th day of October, 1995, before me personally appeared Everett E. Engle, to me personally known, who, being by me duly sworn, says that he is Vice President, Marketing Services of Thrall Car Manufacturing Company, that said instrument was executed on behalf of said corporation by authority of its Board of Directors, and he acknowledged before me that the execution of the foregoing instrument was the free act and deed of said corporation.

Delphine C. Brands
Notary Public

My commission expires: 12/5/97



District of Columbia, ss:

I have compared the attached copy of the Interim User Agreement between Thrall Car Manufacturing Company and Consumers Power Company dated October 13, 1995 with the original and have found the copy to be complete and identical in all respects to the original document.

Dated at Washington, D.C. this 19th day of October 1995.

Judith D. Reed

Judith D. Reed
Notary Public, D.C.
My Commission Expires
August 31, 1997